

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

BRAUN GmbH,

Plaintiff,

v.

RAYOVAC CORPORATION,

Defendant.

Civil Action No. 03-CV-12428-WGY

**BRAUN GmbH'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT OF INFRINGEMENT**

Plaintiff Braun GmbH ("Braun") respectfully moves pursuant to Fed. R. Civ. P. 56(a) for entry of partial summary judgment on the infringement by Defendant Rayovac Corporation of claim 11 of Braun's United States Patent No. 5,711,328 (the "'328 Patent"). In support of this motion, Braun submits the accompanying *Statement of Undisputed Material Facts In Support of Braun GmbH's Motion For Partial Summary Judgment Of Infringement*, *Declaration of Dalila Arguez Wendlandt In Support of Braun GmbH's Motion For Partial Summary Judgment Of Infringement* with attached exhibits, *Declaration of Saymir Nayfeh In Support of Braun GmbH's Motion For Partial Summary Judgment Of Infringement*, and supporting memorandum.

The fact of Rayovac's infringement can be decided summarily as a matter of law, particularly where, as here, the Court has already construed claim 11's five elements in a Markman hearing. See, e.g., Neutrino Devel. Corp. v. Sonosite, Inc., 337 F.Supp.2d 937

(S.D. Tex. 2004) (trial court first issued claim construction, then awarded summary judgment for literal infringement in separate opinion); SDS USA, Inc. v. Ken Specialties, Inc., 122 F.Supp.2d 533 (D. N.J. 2000) (same); Chiron Corp. v. Genentech, Inc., No. Civ. S-00-1252, 2002 WL 32123930 (E.D. Cal. June 24, 2002) (same). Rayovac contests only the applicability of two of claim 11's elements. As discussed in Braun's memorandum in support of this motion, those two elements read on the accused product exactly.

### **CONCLUSION**

Wherefore, because there is no genuine issue of material fact as to Rayovac's infringement, partial summary judgment should be entered

Braun GmbH

By its attorneys,

/s/ Dalila A. Wendlandt

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August 22, 2005

### **Certificate of Compliance with LR 7.1**

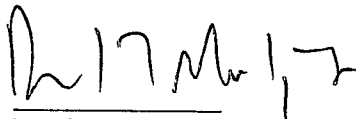
I, Dalila Arguez Wendlandt, certify that I conferred with counsel for Rayovac Corporation in a good faith effort to resolve the disputes addressed herein, and that effort failed.

**CERTIFICATE OF SERVICE**

I hereby certify that on August 22, 2005, I served a copy of the Plaintiff's Motion for Partial Summary Judgment of Infringement on:

By Fed-Ex:

James A. Shimota  
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Daniel J. Maher